

February 03, 2003

ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Written Ex Parte*
UNE Triennial Review – CC Docket No. 01-338
Local Competition – CC Docket No. 96-98
Deployment of Advanced Wireline Services – CC Docket No. 98-147

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206(b), attached for inclusion in the record of the above-referenced proceeding is a letter AT&T, ASCENT, Broadview, CompTel, Eschelon, MetTel, the PACE Coalition, Talk America, WorldCom and Z-TEL sent to Chairman Powell today.

Sincerely,

/s/ Kimberly Scardino
Kimberly Scardino

Attachment

cc: Kathleen Q. Abernathy
Jonathan S. Adelstein
Michael J. Copps
Kevin J. Martin
Matthew Brill
Jeffrey Carlisle
Michelle Carey
Jordan Goldstein
Daniel Gonzalez
Christopher Libertelli
William Maher
Lisa Zaina

February 3, 2003

Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Written Ex Parte*
UNE Triennial Review – CC Docket No. 01-338
Local Competition – CC Docket No. 96-98
Deployment of Advanced Wireline Services – CC Docket No. 98-147

Dear Chairman Powell:

In its latest filing on unbundled switching, Qwest proposes a framework for removing local switching from the Commission's list of unbundled network elements ("UNEs"). Under Qwest's plan, the Commission would summarily eliminate unbundled switching in any LATA in which at least three competitive local exchange carriers ("CLECs") have deployed a switch.¹ In LATAs with fewer than three competitive LEC switches, Qwest would require the relevant state commission to establish a timetable for eliminating unbundled switching within two years.² This eleventh-hour ploy is merely another attempt by a Bell Company to bring local competition for residential and small business customers to an abrupt end by eliminating the unbundled network element platform ("UNE-P").³ UNE-P is the only vehicle that has proven effective at allowing competitors to make inroads into the Bell Operating Companies' ("BOCs") monopolies in the residential and small business markets. As explained below, Qwest's proposal is grounded in a faulty premise and completely ignores the fundamental problems impairing carriers' ability to compete effectively without unbundled switching, and must therefore be summarily rejected.

Qwest's plan is premised on the assumption that the existence of three competitive LEC switches in a LATA demonstrates that "CLECs . . . would not be impaired in their provision of competitive local service in the absence of ILEC

¹ Letter from R. Steven Davis, Qwest, to Chairman Michael K. Powell, FCC, at 1, 3-4, attached to letter from Cronan O'Connell, Qwest, to Marlene Dortch, FCC (Jan. 30, 2003) ("Qwest *ex parte*"). (Unless otherwise indicated, all comments and *ex parte* filings referenced herein were filed in CC Docket No. 01-338.)

² *Id.* at 4.

³ According to Qwest's own figures, approximately 92% of all access lines in Qwest territory are in LATAs with 3 or more competitive LEC switches. *See Qwest ex parte* Att. C. All of these lines would be subject to rapid elimination of UNE-P.

switching.”⁴ This claim is ludicrous. The mere existence of three CLEC-owned switches in a LATA proves nothing. As a threshold matter, Qwest would not even require that these switches be operational.⁵ More importantly, the record in this proceeding is replete with evidence that CLEC switches are being used to provide integrated voice and data services to customers with digital service requirements; competitive switches are not being used on a widespread mass markets basis to provide basic analog services to small business and residential customers.⁶

Mass-market customers with analog service needs are being served by CLECs almost exclusively via UNE-P.⁷ That is because competitors that seek to serve mass-market residential and small business customers today are plainly impaired without

⁴ *Id.* at 3.

⁵ Further, the Qwest plan does not address what would occur if one or more of the three switches that provided the basis for removal of local switching from the UNE list are withdrawn from the market. The continuing trend of CLEC consolidation and market withdrawal will likely result in additional CLEC switches being abandoned or removed; a fact the Qwest plan takes no account of. Moreover, Qwest proposes to utilize the Local Exchange Routing Guide, or LERG, to identify CLEC switches in a LATA. The LERG is an unreliable indicator of the actual presence of switch-based CLECs operating and offering analog dialtone service in an area. Where the efficacy of the LERG has been scrutinized, it is clear that the LERG does not provide that information. *See* Attachment to letter from Thomas M. Koutsky, Z-Tel, to Marlene H. Dortch, FCC (Dec. 23, 2002), Supplemental Testimony of John M. Ivanuska, Docket No. 24542 (Tex. P.U.C. Jan. 25, 2002) at 1-3; Attached Transcript of Texas PUC Hearing in Case No. 24542 at 253-55 (Jan. 28, 2002).

⁶ *See, e.g.*, January 2003 *UNE-P Fact Report* at 2-3, filed as an attachment to letter from Genevieve Morelli, PACE Coalition, to Marlene Dortch, Secretary, FCC (Jan. 14, 2003); letter from Genevieve Morelli, PACE Coalition, to Marlene Dortch, Secretary, FCC (Oct. 4, 2002).

⁷ For example, over 90% of the circuits connected to WorldCom’s switches are digital T1 circuits, as opposed to analog DS0 circuits currently used to serve mass-market residential and small business customers. There are numerous reasons that make it economically and operationally feasible for CLECs to serve large (*i.e.* DS1 and above) business customers – but not mass-market small business and residential customers – via their own switches. *See, e.g., Impairments Associated with Serving DS0 Customers Via Circuit Switches*, Presentation by Birch Telecom, filed as an attachment to letter from Genevieve Morelli to Marlene Dortch, FCC (Dec. 9, 2002); *WorldCom Response to SBC and BellSouth Critique of MiCRA Model*, attached to letter from Gil M. Strobel to Marlene H. Dortch, FCC (Jan. 27, 2003) (“WorldCom Jan. 27 *ex parte*”).

unbundled switching due to the many economic and operational barriers to serving *those* customers via competitively owned switches. The record in this proceeding overwhelmingly establishes, and Qwest simply ignores, that even where CLEC switches have been deployed (and can be used economically to provide integrated voice and data services to customers with more sophisticated digital service requirements), requesting carriers currently cannot gain practical and economically viable access to the analog loops that serve mass-market consumers and connect them to those switches.⁸ If access to unbundled local switching were eliminated, those mass-market customers would be left with no choice of service provider other than the incumbent local exchange carrier ("ILEC"). Because it fails even to address these impairments or the competitive impact of denying CLECs unbundled switching merely because it may be economically and operationally possible to provide T1-level services through a CLEC switch, the Qwest proposal must be rejected.⁹

⁸ Such costs include those associated with collocation, hot cuts, digitization and concentration equipment, transport and OSS. For example, the physics of the analog signals carried over copper-based loops limit the effective transmission distance for such facilities. As a result, a competitor cannot use a geographically distant switch to serve its customers unless it also digitizes the signals carried over such loops. This requires the use of collocation and additional equipment that can digitize, concentrate and multiplex the signals on voice-grade loops onto efficient higher capacity transport that delivers the traffic on such loops to the competitor's switch. The need for competitors to incur these "backhaul" costs – and given the incumbents' mileage-based tariff structures, the cost of using special access or UNE transport to backhaul loops to a competitively-owned switch rises severely as the distance rises – places competitive carriers at a severe cost disadvantage relative to the incumbent. The incumbent can connect its copper loop directly to its switch merely by running a jumper wire across its main distribution frame in the central office. To accomplish the *same* function, a competitive carrier must establish a collocation, order a hot cut, digitize the signals, and carry the traffic over transport facilities to its distantly located switch. These are additional, substantial costs that only the competitive carrier must incur, and it is because of these and other cost and operational disadvantages that competitive carriers unquestionably are impaired in serving mass market customers without access to unbundled switching. *See, e.g.*, letter from Donna Sorgi, WorldCom, to William F. Maher, FCC, at 2, attached to letter from Gil M. Strobel to Marlene H. Dortch, FCC (Jan. 8, 2003) ("WorldCom Jan. 8 *ex parte*"); letter from Joan Marsh, AT&T, to Marlene Dortch, FCC (Jan. 17, 2003) (quantifying cost disparities that competitive carriers face in serving mass-market customers using competitively-owned switches).

⁹ Foremost among the operational barriers to entry is the fact that the manual hot-cut process currently employed by the incumbent LECs is woefully inadequate for handling the unprecedented volume of transactions that would be required if competitors were forced to serve mass-market customers over their own switches. SBC's hot cut volumes,

The Qwest plan merely *assumes* that if three CLEC switches physically exist in a LATA, a wholesale market for local switching will develop, thereby enabling CLECs to refrain from deploying their own switches to serve customers.¹⁰ As Qwest points out, nineteen of the twenty-seven LATAs served by Qwest have three or more qualifying CLEC switches today¹¹ yet Qwest makes no representation that a wholesale analog local switching market exists in any of those LATAs. Indeed, there is voluminous evidence on the record to the contrary. To the extent any wholesale local switching capacity is available anywhere in the country, it is capacity to serve customers with DS1 and higher service requirements, not residential and small business customers.¹²

Even if merely counting CLEC switches were an appropriate way in which to measure impairment – which it is not – there is absolutely no record for the Commission to conclude that the existence of three switches in a LATA is a sufficient basis for a national finding of non-impairment. As the signatories to this letter have pointed out on numerous occasions, competitive conditions vary considerably by geographic area and a single national rule that applies everywhere is not legally sustainable.¹³ Qwest's proposal would deny the states any role in determining impairment in LATAs with three or more switches. Given that the magnitude of these economic and operational barriers varies greatly from state to state, state commissions should have an active role in determining

for example, would have to increase by about 10,000% just to accommodate current UNE-P volumes. WorldCom Jan. 27 *ex parte* at 17. Qwest also fails to account for the operational issues associated with unbundled DLC loops, which constitute about 20-30% of all loops. Because the volumes of UNE loops today are small, the incumbent LECs place all end users served by such loops on spare copper. This approach will not work for UNE-P volumes: there is simply not enough copper to handle all the customers now served by UNE-P. In addition, any customer that is already being served by a fiber-fed loop with UNE-P could suffer degradation in service if switched to a copper loop.

¹⁰ Qwest *ex parte* at 3.

¹¹ *Id.*, n.6. These nineteen LATAs comprise approximately 92% of all Qwest access lines. Qwest *ex parte* at Att. C.

¹² See, e.g., Affidavits of William Capraro, Jr., Joseph Gregori, and Rand Currier, attached to letter from Walter G. Blackwell, ASCENT, to Chairman Michael Powell, FCC (Dec. 4, 2002).

¹³ See, e.g., letter from Access Integrated Networks, *et al.* to Marlene Dortch, FCC, (Oct. 24, 2002).

when an incumbent LEC has adequately cured these problems so that competitors no longer are impaired without unbundled switching.

Even in LATAs with fewer than three competitive switches, Qwest would severely limit the states' authority. Qwest would deprive state commissions of the opportunity to evaluate the critical economic barriers described above.¹⁴ With respect to the operational issues, the states would be relegated to overseeing the performance data and monitoring the transition of the existing customer base.¹⁵ The states should not be reduced to such a passive role. Instead, they should be actively involved in determining whether economic and operational barriers that give rise to impairment have been overcome in a particular area; only after a state has determined that such barriers have been overcome should the state begin working with carriers to craft a plan to transition away from unbundled switching.

Finally, the Qwest proposal assumes that a CLEC can serve *any* customer in a LATA so long as a competitive switch is located *somewhere* in the LATA. This assumption is not borne out by the facts. The MiCRA model filed by WorldCom shows that a competitive LEC would be at a 56% cost disadvantage even in an area where it has its own switch, transport facilities, and collocation arrangement and has achieved a 7% market share.¹⁶ The cost disadvantage and resulting impairment is even greater where a carrier is not already collocated and does not have its own transport facilities in place.¹⁷

Qwest suggests that competitive LECs could rely on enhanced extended links (EELs) to mitigate the cost disadvantages they suffer when they have to haul their traffic to a distant switch.¹⁸ Qwest's EEL offer is meaningless because it does not enable a competitor to combine multiple unbundled analog loops with transport.¹⁹ Even if Qwest

¹⁴ Qwest's proposal that states consider the presence of intermodal competition is meaningless. Qwest *ex parte* at 4. The record in this proceeding clearly shows that there is virtually no intermodal competition for voice service. *See* WorldCom Comments at 35-38; WorldCom Reply Comments at 71-86 (demonstrating that cable, wireless and satellite do not provide significant intermodal competition for local providers).

¹⁵ Qwest *ex parte* at 5. Qwest would have the states use existing metrics in monitoring and enforcing hot cut performance. *See id.* As shown in various filings in this proceeding, these metrics have proven wholly inadequate to ensure acceptable hot cut performance.

¹⁶ *See* WorldCom Jan. 8 *ex parte*, Att. A at 7.

¹⁷ *See id.*

¹⁸ Qwest *ex parte* at 3.

¹⁹ *Id.* at 3 (citing *ex parte* letter from Cronan O'Connell at 12-13 (Jan. 22, 2003)).

Honorable Michael K. Powell

February 3, 2003

Page 6

had offered to provide DS0 EELs with concentration, however, there is no reason to conclude that would cure the impairment because: 1) DS0 EELs have not been proven operational; and 2) in situations where the switch is far from the customer, the transport costs would be excessive. These are costs that incumbent LECs do not have to incur because their switches are at or very close to their end offices.

For the reasons explained above, the undersigned competitive carriers urge the Commission to reject Qwest's thinly veiled attempt to kill local competition for small business and residential customers and preserve BOC monopolies.

Sincerely,

AT&T
ASCENT
Broadview Networks
CompTel
Eschelon Telecom
MetTel
PACE Coalition
Talk America
WorldCom
Z-Tel Communications, Inc.